

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

Capital One Financial Corporation,

Plaintiff,

v.

John A. Kanas and John Bohlsen,

Defendants.

Civil Action No. 1:11-cv-750 (LO/TRJ)

**ORDER**

Upon consideration of Plaintiff Capital One Financial Corporation's Motion for Leave to File Documents Under Seal, and Defendants John Kanas's and John Bohlsen's Response thereto, the Court finds as follows:

1. Proper notice of this sealing motion has been given to the public through the public filing of this motion.

2. On April 20, 2012, Plaintiff filed its Memorandum in Opposition to Defendants' Motion for Summary Judgment and its Motion for Leave to File Documents Under Seal, which sought to file under seal, *inter alia*, Exhibits A, B, C, D, E, H, K, N, O, P, S, T, V, W, X, Y, Z, AA, BB, CC, and DD to the Declaration of Michael Diamant dated April 20, 2012 ("Diamant Declaration") and an unredacted version of Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, certain portions of which were redacted in the publicly filed version because they reference those exhibits.

3. Exhibits A, B, N, O, P, S, T, V, W, X, Y, AA, and BB to the Diamant Declaration contain documents and information that have been designated as Protected Material, as defined

in the Agreed Protective Order Without Sealing Provisions (ECF No. 20) by Defendants, BankUnited, or a non-party. In addition, Exhibit CC, the Responsive Expert Report of Jonathan Macey (dated April 16, 2012), also contains Protected Material of other parties.

4. Exhibit DD is the excerpted Expert Sur-Rebuttal Report of Daniel Fischel, which contains proprietary and confidential information of Capital One related to its customers.

5. Exhibit Z is the excerpted deposition transcript of Matthew Galligan, which contains Protected Material designated by a non-party and further contains information protected from disclosure by a non-disclosure agreement between a non-party and Capital One.

6. Exhibits C, D, and K, the excerpted deposition transcripts of Messrs. Kanas, Bohlsen, and Skorobohaty respectively, have been designated as Protected Material by Defendants and/or BankUnited and may also contain the proprietary and confidential business information of Capital One and its subsidiaries.

7. Exhibits E and H are the excerpted deposition transcripts of John Finneran and Lynn Carter, respectively, and contain proprietary and confidential business information regarding Capital One's business reasons for entering into non-competition agreements with Defendants, information regarding customer and bank operations strategy, as well as other sensitive business information.


8. The Court, having considered Plaintiff's Motion for Leave to File Documents Under Seal and Defendants' Response thereto, and having reviewed the sealed and redacted material *in camera*, finds that Exhibits A, B, C, D, E, H, K, N, O, P, S, T, V, W, X, Y, Z, AA, BB, CC, and DD to the Diamant Declaration contain confidential and commercially sensitive business information.

9. Under these circumstances, Capital One's, Defendants', BankUnited's, and non-party's interest in protecting this confidential and commercially sensitive information outweighs the public's right of access. *See Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000).

10. Capital One's proposal to meet and confer with the other parties to agree upon and publicly file appropriate public redacted versions of Exhibits B, C, and K and to file redacted versions of Exhibits E and H to the Diamant Declaration "constitutes the least drastic method of shielding the information at issue." *See Adams v. Object Innovation, Inc.*, No. 3:11-cv-272, 2011 WL 7042224, at \*4 (E.D. Va. Dec. 5, 2011). Accordingly, it is hereby

ORDERED that Plaintiff may file Exhibits A, B, C, D, E, H, K, N, O, P, S, T, V, W, X, Y, Z, AA, BB, CC, and DD to the Diamant Declaration under seal. Plaintiff may also file the unredacted version of its Memorandum in Opposition to Defendants' Motion for Summary Judgment under seal. These sealed filings shall remain sealed unless and until the Court enters an order unsealing them. Plaintiff and Defendants shall meet and confer to agree upon public redacted versions of Exhibits C, D, and K to be filed within fourteen (14) days of this order, which are to be electronically filed without sealing. Plaintiff also shall file redacted versions of Exhibits E and H within fourteen (14) days of this Order, which is to be electronically filed without sealing.

Dated: 4/23/12

  
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Hon. Liam O'Grady  
United States District Judge